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09/894,704	06/28/2001	Masao Noguchi	MAT-8158US	5140

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EXAMINER

FETSUGA, ROBERT M

ART UNIT	PAPER NUMBER
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18

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Please find below and/or attached an Office communication concerning this application or proceeding.



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AND INTERFERENCES

Paper No. 18

Application Number: 09/894,704
Filing Date: June 28, 2001
Appellant(s): NOGUCHI ET AL.

Lawrence E. Ashery
For Appellant

EXAMINER'S ANSWER

MAILED
MAY 29 2003
GROUP 3700

This is in response to the brief on appeal filed April 15, 2003.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Invention

The summary of invention contained in the brief is deficient because the discussion presented is that of non-elected embodiments. The embodiment of Figs. 1-9 was elected

Art Unit: 3751

for prosecution in this application. See paper no. 11 received September 18, 2002. Attention is directed to the instant specification at pages 24-48 for a description of the elected embodiment.

(6) Issues

Appellant's brief presents arguments relating to objections made to the disclosure and specification. This issue relates to petitionable subject matter under 37 CFR 1.181 and not to appealable subject matter. See MPEP § 1002 and § 1201. The remaining issues in Appellants' brief are properly on appeal.

(7) Grouping of Claims

Appellant's brief includes a statement that claims 40 and 56 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) ClaimsAppealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

Art Unit: 3751

6,195,814

Yoshida et al.

3/2001

10-028656 (10-28656) Shirai

2/1998

(10) ***Grounds of Rejection***

The following ground(s) of rejection are applicable to the appealed claims:

Claims 56-64 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Appellant's elected in the response filed September 18, 2002 (paper no. 11) to prosecute the invention(s) embodied in Figs. 1-9 and stated therein that claims 56-64 correspond to this election. Claim 56 recites, in part, "a substantially flat spray of water in a substantially vertical plane." The disclosure has again been thoroughly reviewed resulting in the determination that this feature was not originally disclosed as being associated with the embodiment(s) of Figs. 1-9. In fact, this feature does not appear to be disclosed as being associated with any particular embodiment, and indeed is not represented in any drawing figure. Appellant's argue at page 4 of the brief two distinct sections of the specification in support of this

Art Unit: 3751

feature being associated with the elected invention. The examiner can not agree. While some of the terms used to define the feature of the contested claim language can be found amongst the wording in the two sections, such does not appear to set forth the particular combination of features set forth by the language quoted supra.

Claim 40 (and claims 41, 50 and 52-55 standing or falling therewith) is rejected under 35 U.S.C. 102(b) as being anticipated by Yoshida et al. The Yoshida et al. (Yoshida) reference (Fig. 31) discloses a shower apparatus comprising: a main body (supporting 47); a plurality of arms 47 supported movably (col. 18 lns. 10-14) towards and away (col. 18 lns. 62-64) from each other; and spray nozzles 8, as claimed. The distance between the arm support positions is narrower than the shoulder breadth of a bather as clearly illustrated in Fig. 31. Appellant's argue at page 4 of the brief the arms of Yoshida are not movable toward and away from each other. The examiner can not agree. The structure and function of the arms 47 is set forth, in pertinent part, at column 18 of Yoshida. As noted, lines 62-64 describe the arms 47 as being separately movable (relative to one another). The broad claim language "movable towards and away from each other" does not appear to distinguish this structure/function of the arms 47 disclosed by Yoshida.

Art Unit: 3751

Claim 56 (and claims 57-62 standing or falling therewith) is provisionally rejected under 35 U.S.C. 103(a) as being unpatentable over Yoshida and JP 10-028656. The Yoshida reference (Fig. 11) discloses a shower apparatus comprising: a plurality of movable (col. 18 lns. 10-14) arms 47; a water source 30,31; and a plurality of first nozzles 45,46,48. Therefore, Yoshida teaches all claimed elements except for the nozzle spray shape. Although the spray shape of the Yoshida nozzles may not be "a substantially flat spray of water in a substantially vertical plane", as claimed, attention is directed to the JP 10-028656 (Shirai) reference which discloses analogous nozzles 45,46,48 which apparently further produce "a substantially flat spray of water in a substantially vertical plane" in the same sense as with appellants' nozzles. Therefore, in consideration of Shirai, it would have been obvious to one of ordinary skill in the art to associate a differently shaped spray with the Yoshida nozzles in order to facilitate use. Appellant's argue at pages 4-5 of the brief they do not understand how the Shirai nozzles are capable of producing the quoted spray shape (which is the subject of the new matter rejection supra). While the examiner does not understand this either, he nonetheless is charged with examination of appellants' patent application. Appellant's

Art Unit: 3751

disclose in the first full paragraph on page 40 of the instant specification, "the second wide-angle spray nozzle 9 is a nozzle realized by applying the principle of nozzle indicated in the Japanese Laid-Open Patent No. 10-28656." To the extent nozzle 9 is the subject of the "substantially flat spray of water in a substantially vertical plane" language of claim 56 (spray area 202 in Fig. 1?), the nozzle(s) 45,46,48 of Shirai is apparently equivalent thereto.

(11) Response to Argument

Appellants' remarks have been fully considered and have been previously addressed.

For the above reasons, it is believed that the rejections should be sustained.

Art Unit: 3751

Respectfully submitted,

Robert M. Fetsuga
Primary Examiner
Art Unit 3751

rmf
May 28, 2003

Conferees
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